

## § 123.5

## 22 CFR Ch. I (4–1–14 Edition)

electronically file the export information using the Automated Export System (AES), and identify 22 CFR 123.4 as the authority for the export and provide, as requested by U.S. Customs and Border Protection, the entry document number or a copy of the U.S. Customs and Border Protection document under which the article was imported.

[58 FR 39299, July 22, 1993, as amended at 64 FR 17533, Apr. 12, 1999; 68 FR 61101, Oct. 27, 2003; 70 FR 50960, Aug. 29, 2005; 77 FR 16597, Mar. 21, 2012; 77 FR 22670, Apr. 17, 2012; ]

### § 123.5 Temporary export licenses.

(a) The Directorate of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP-73). Such licenses are valid only if the article will be exported for a period of less than 4 years and will be returned to the United States and transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Directorate of Defense Trade Controls if the article is to remain outside the United States beyond the period for which the license is valid.

(b) *Requirements.* Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a Port Director of U.S. Customs and Border Protection is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate. The license for temporary export must be presented to the Port Director of U.S. Customs and Border Protection who, upon verification, will endorse the exit column on the reverse side of the license. In some instances of the temporary export of technical data (e.g., postal shipments), self-endorsement will be necessary (see § 123.22(b)). The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel exported under its own power, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized

by the Department of State to leave the United States temporarily.

(c) Any temporary export license for hardware that is used, regardless of whether the hardware was exported directly to the foreign destination or returned directly from the foreign destination, must be endorsed by the U.S. Customs and Border Protection in accordance with the procedures in § 123.22 of this subchapter.

[70 FR 50960, Aug. 29, 2005]

### § 123.6 Foreign trade zones and U.S. Customs and Border Protection bonded warehouses.

Foreign trade zones in the United States and U.S. Customs and Border Protection bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a U.S. Customs and Border Protection bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense National Industrial Security Program Operating Manual will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs and Border Protection bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

[71 FR 20540, Apr. 21, 2006]

### § 123.7 Exports to warehouses or distribution points outside the United States.

Unless the exemption under § 123.16(b)(1) is used, a license is required to export defense articles to a warehouse or distribution point outside the United States for subsequent resale and will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

### § 123.8 Special controls on vessels, aircraft and satellites covered by the U.S. Munitions List.

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the U.S. Munitions List is an export for purposes of this subchapter and requires a license

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or written approval from the Directorate of Defense Trade Controls. This requirement applies whether the aircraft, vessel, or satellite is physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite covered by the U.S. Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Directorate of Defense Trade Controls is therefore required. Such transactions may also require the prior approval of the U.S. Department of Transportation's Maritime Administration, the Federal Aviation Administration or other agencies of the U.S. Government.

[71 FR 20540, Apr. 21, 2006]

### **§ 123.9 Country of ultimate destination and approval of reexports or retransfers.**

(a) The country designated as the country of ultimate destination on an application for an export license, or in an Electronic Export Information filing where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, reexporting, retransferring, transshipping, or disposing of a defense article to any end-user, end-use, or destination other than as stated on the export license, or in the Electronic Export Information filing in cases where an exemption is claimed under this subchapter, except in accordance with the provisions of an exemption under this subchapter that explicitly authorizes the resell, transfer, reexport, retransfer, transshipment, or disposition of a defense article without such approval. Exporters must determine the specific end-user, end-use, and destination prior to submitting an application to the Directorate of Defense Trade Controls or claiming an exemption under this subchapter.

NOTE TO PARAGRAPH (a): In making the aforementioned determination, a person is expected to review all readily available information, including information readily available to the public generally as well as

information readily available from other parties to the transaction.

(b) The exporter, U.S. or foreign, must inform the end-user and all consignees that the defense articles being exported are subject to U.S. export laws and regulations as follows:

(1) The exporter, U.S. or foreign, must incorporate the following statement as an integral part of the bill of lading, air waybill, or other shipping document, and the purchase documentation or invoice whenever defense articles are to be exported, retransferred, or reexported pursuant to a license or other approval under this subchapter: "These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user] under [license or other approval number or exemption citation]. They may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the U.S. Department of State or use of an applicable exemption."; and

(2) When exporting items subject to the EAR (*see* §§ 120.42 and 123.1(b) of this subchapter) on a Department of State license or other approval, the U.S. exporter must provide to the end-user and consignees in the purchase documentation or other support documentation submitted with the Department of State license or other approval request the appropriate EAR classification information for each item exported pursuant to a U.S. Munitions List "(x)" paragraph. This includes the appropriate ECCN or EAR99 designation.

(c) Any U.S. person or foreign person requesting written approval from the Directorate of Defense Trade Controls for the reexport, retransfer, other disposition, or change in end-use, end-user, or destination of a defense article initially exported or transferred pursuant to a license or other written approval, or an exemption under this subchapter, must submit all the docu-